

ADVISORY OPINION 2007-001

Any advisory opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

May 15, 2007

Charles B. Wells
Executive Director
American Federation of Teachers - Kentucky
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Dear Mr. Wells:

We received your written request for an advisory opinion on April 16, 2007. In your request, you provided us the following facts: The American Federation of Teachers–Kentucky (AFT-Kentucky) would like to establish a political action committee (otherwise referred to as a “permanent committee” under Kentucky law) which would be partially funded by membership dues. Funding for this proposed committee would come primarily from voluntary contributions from members of two local affiliates of the American Federation of Teachers (AFT): the Kentucky Association of State Employees (KASE) and the Technical Faculty and Staff Alliance (TFSA). KASE is made up of members who primarily work for Kentucky state government. TFSA is made up of members who primarily work for the Kentucky Community and Technical College System and for the University of Kentucky. The proposed permanent committee does not plan to solicit contributions from state merit employees although many of these employees are members of KASE. You further state that any contribution from the national affiliate AFT would be made out of funds that are derived from dues collected from its public employee members who work throughout the country.

Accordingly, you have raised the following questions concerning permanent committees:

- (1) Whether AFT-Kentucky has a legal right to establish a permanent committee in Kentucky

KRS 121.015(3)(d) defines a “permanent committee” as:

a group of individuals, including an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year.

Based on this definition, your organization may register a permanent committee with the Registry so long as (1) the committee is established as, or is intended to be, a permanent organization; (2) the primary purpose of the committee is to expressly advocate the election or defeat of one or more clearly identified candidates, slates of candidates, or political parties; and (3) the committee will function on a regular basis throughout the year. Since you did not provide us enough specific facts in your request, you will need to apply this definition on your own to determine whether your proposed committee meets the definition of a permanent committee and therefore must register with the Registry.

- (2) Whether the proposed permanent committee may be partially funded from voluntary contributions from members of KASE and TFSA

As stated in your request, your proposed permanent committee will not directly target and solicit contributions from individuals due to their status as state employees. The solicitations will be directed to individuals as members of local affiliated organizations, thus, avoiding any concerns under KRS 121.150(23). Therefore, the individual members of the two local affiliates identified above may voluntarily contribute to your proposed permanent committee. However, please remember that, under KRS 121.150(10), a person may contribute no more than \$1,500 per year to all permanent committees in the aggregate. Furthermore, if your proposed permanent committee decides to solicit contributions through dues statements to members, we recommend that you first consult the guidance set forth in the prior KREF Advisory Opinions 1992-005 and 1994-027.

- (3) Whether the proposed permanent committee can solicit additional contributions from its national affiliate AFT

You did not provide specific facts regarding the structure of your national affiliate. Assuming the national affiliate is structured as a permanent committee (and not as a corporation) then the national affiliate may voluntarily contribute to your proposed permanent committee. Kentucky campaign finance law strictly prohibits corporate contributions to permanent committees, either directly or indirectly.

In terms of contribution limits, it is important to determine whether or not these two permanent committees are “affiliated by bylaw structure or by registration” as set forth under KRS 121.150(7) and further defined under 32 KAR 2:190. For example, all permanent committees that are “established, financed, maintained or controlled by or in common control with . . . a single national or international union or its state and local unions” shall be considered affiliated committees. 32 KAR 2:190, Section 1(b). Furthermore, all permanent committees that are “established, financed, maintained or controlled by or in common control with . . . a membership organization, other than a political party committee, including a trade or professional association or group” shall also be considered affiliated committees. 32 KAR 2:190, Section 1(c). Other factors include whether there is an ongoing provision of funds between the committees and whether a common or overlapping membership indicates a formal ongoing relationship. 32 KAR 2:190, Section 2. You may consult this regulation for further guidance on the affiliation rules.

There are no contribution limits between affiliated permanent committees. The committees may transfer unlimited amounts between themselves. However, affiliated permanent committees shall be considered as one committee when making contributions to candidates and are subject to one overall contribution limit per candidate per election. See KRS 121.150(7). For example, if one affiliated permanent committee contributed the maximum amount of \$1,000 to a candidate, the other affiliated permanent committee could not make a contribution to that candidate in that election.

Please keep in mind that this advisory opinion is based on the specific facts set forth in your written request. If you have any questions concerning this advisory opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,

Connie Verrill Murphy
General Counsel